IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2077 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMISHBHAI CHADRAKANT KANSARA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MP PRAJAPATI for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/02/2006

ORAL JUDGMENT

1. Rule. Mr.H.M.Prachchhak, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3.In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 4.2.2003 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.1,48,520/- plus Rs.250/- by way of penalty in all Rs.1,49,270/- with regard to the document No.4779 executed and presented before the Sub-Registrar, Vadodara dated 18.8.2000.

4.It is the contention on behalf of the petitioner that against the impugned order dated 4.2.2003 passed by the Deputy Collector, Stamp Duty Valuation, Organization, Division-1, Vadodara, the petitioner had preferred an appeal before the Chief Revenue Controlling Authority along with

application for stay / injunction and waiver of the deposit and also preferred an application for condonation of delay on 16.4.2005. It is the contention on behalf of the petitioner that the order dated 4.2.2003 was not served at earlier point of time and when the attachment notice under Section-152 of the Bombay Land Revenue Code was served upon the petitioner on 12.2.2005, the petitioner came to know about the said order and the petitioner immediately applied for certified copy of the order passed the Deputy Collector, Stamp Duty Valuation, Vadodara on 24.3.2005 and the same came to be received by the petitioner on 29.3.2005 and therefore, as such, there is no delay if an appeal is considered to have been filed within a period of 90 days from the date of knowledge and / or receipt of the certified copy of the order passed by the Deputy Collector, Vadodara. It is submitted by Shri M.P.Prajapati, learned advocate for the petitioner that in the mean time the petitioner came to be served with the further notice for recovery of the order as per the order passed by the Deputy Collector, Vadodara and

therefore, the petitioner has preferred the present special civil application.

5.Shri H.M.Prachchhak, learned AGP appearing on behalf of the respondents has tried to support the order impugned in the present special civil application passed by the Deputy Collector, Stamp Duty Valuation, however, he is not in position to controvert the contentions raised on behalf of the petitioner by countering and / producing any documentary evidence supporting the case of the respondents.

6.Having regards to the facts and circumstances of the case, it is required to be noted that the petitioner has already approached the Chief Revenue Controlling Authority under Section-32-B of the Act against the order passed by the Deputy Collector, Stamp Duty Valuation, Vaadodara dated 4.2.2003. It is the contention on behalf of the petitioner that the order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 4.2.2003 was not served upon the petitioner till 12.2.2005 and the

petitioner got the certified copy of the order for the first time on 29.3.2005 and therefore, the same is within 90 days from the date of knowledge of the order and / or from the date of receipt of the certified copy of the order. It appears that as such, no decision has been taken by the Chief Revenue Controlling Authority on the issue whether to entertain the appeal on merits or not and the aforesaid aspect has not been considered by the Chief Revenue Controlling Authority. The Chief Revenue Controlling Authority may verify the aforesaid factum with regard to non service of the order earlier by calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Vaodadara who has passed the impugned order and can verify the same whether the impugned order passed by the Deputy Collector was served upon the petitioner or not ? If ultimately it is found by the authority that order was not served upon the petitioner earlier and that the petitioner had no knowledge prior to 12.2.2005, in that case, the Chief Revenue Controlling Authority may entertain the appeal and decide and dispose of the

same on merits subject to complying with all other requirements as required to be complied with under Section-32-B of the Act. However, if ultimately it is found that the petitioner had knowledge of the impugned order prior to 12.2.2005 and / or order was served upon the petitioner earlier, then he may not entertain the appeal. Such an exercise is to be done by the Chief Revenue Controlling Authority within a period of three months from the date of receipt of this order. However, it is made clear that this Court has not expressed any opinion with regard to contention on behalf of the petitioner which is stated hereinabove and no finding has been given by this Court in favour of either party and it is ultimately for the Chief Revenue Controlling Authority to take an appropriate decision in accordance with law after calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Vadodara who has passed the order dated 4.2.2003 and to verify the said factum.

7.With aforesaid observations and directions, the

present special civil application is disposed of accordingly. Rule is discharged. However, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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